

203.26.

II. Claims 48-79, drawn to an apparatus, classified in class 128, subclass 203.26.

The Examiner has indicated that the inventions are related as process and apparatus for its practice, but distinct because "the process for using the product as claimed can be practiced with another materially different product" and has cited MPEP § 806.05(h). (See Office Action at page 2.).

Applicants respectively traverse the restriction requirement. According to MPEP § 803, there are two criteria for a proper requirement for restriction between patentably distinct inventions. These are:

- A. The inventions must be independent; and
- B. There must be a serious burden on the examiner if restriction is required.

The Office Action did not meet these requirements. Applicants agree with the Examiner that the inventions are related as process and apparatus. However, the Examiner has stated that both the method and apparatus are under the same class and subclass, therefore the scope of the search required to properly search the apparatus and method claims would essentially overlap. Applicants respectfully suggest that the overlapping search scope for the method claims and apparatus claims makes a simultaneous search for both inventions practical. Thus, a single search for all claimed subject matter would not be a "serious burden", and so requiring restriction between the two inventions is improper. Additionally, the Examiner has not cited any reasons or examples to support the conclusion that the process for using the product as claimed can be practiced with another materially different product. Applicants therefore request reconsideration of the restriction requirement.

However, Applicants hereby provisionally elect the invention of Group I, Claims 1-47 and 80-83, for examination.

### **Conclusion**

In view of the comments and remarks set forth above, application respectfully requests that the Examiner reconsider the restriction requirement. The Applicants submit that the claims pending are in condition for allowance. Accordingly, a Notice of Allowance is earnestly solicited.

In the event that there are any questions relating to this paper, or the application in general, it would be appreciated if the Examiner would telephone the undersigned attorney concerning such

questions so that the prosecution of the application may be expedited.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 502731.**

Respectfully submitted,



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